



January 22, 2008

HOUSE BILL No. 1074

DIGEST OF HB 1074 (Updated January 15, 2008 11:32 am - DI 107)

Citations Affected: IC 35-44; IC 35-50.

Synopsis: Disarming a law enforcement officer. Makes it a Class C felony if a person knows that another person is a law enforcement officer or corrections officer and the person knowingly or intentionally takes or attempts to take a firearm or weapon from the officer or from the immediate proximity of the officer without the consent of the officer and while the officer is engaged in the performance of his or her official duties. Enhances this crime to a Class B felony if the officer is injured and a Class A felony if the officer dies or if the officer is injured and a firearm was taken. Allows a court to suspend only that part of a sentence that is in excess of the minimum sentence imposed on a person convicted of disarming a law enforcement officer.

Effective: July 1, 2008.

**Soliday, Lawson L, Hinkle,
VanDenburgh**

January 8, 2008, read first time and referred to Committee on Judiciary.
January 22, 2008, amended, reported — Do Pass.

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HB 1074—LS 6371/DI 107+



January 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1074

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-44-3-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 3.5. (a) As used in this section, "officer" includes the**
4 **following:**

5 **(1) A person employed by:**

6 **(A) the department of correction;**

7 **(B) a law enforcement agency;**

8 **(C) a probation department;**

9 **(D) a county jail; or**

10 **(E) a circuit, superior, county, probate, city, or town court.**

11 **(2) A law enforcement officer.**

12 **(b) A person who:**

13 **(1) knows that another person is an officer; and**

14 **(2) knowingly or intentionally takes or attempts to take a**
15 **firearm (as defined in IC 35-47-1-5) or weapon that the officer**
16 **is authorized to carry from the officer or from the immediate**
17 **proximity of the officer:**

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1 (A) without the consent of the officer; and

2 (B) while the officer is engaged in the performance of his
3 or her official duties;

4 commits disarming a law enforcement officer, a Class C felony.
5 However, the offense is a Class B felony if it results in serious
6 bodily injury to the officer, and the offense is a Class A felony if it
7 results in death to the officer or if a firearm (as defined in
8 IC 35-47-1-5) was taken and the offense results in serious bodily
9 injury to the officer.

10 SECTION 2. IC 35-50-2-2, AS AMENDED BY P.L.216-2007,
11 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2008]: Sec. 2. (a) The court may suspend any part of a
13 sentence for a felony, except as provided in this section or in section
14 2.1 of this chapter.

15 (b) Except as provided in subsection (i), with respect to the
16 following crimes listed in this subsection, the court may suspend only
17 that part of the sentence that is in excess of the minimum sentence,
18 unless the court has approved placement of the offender in a forensic
19 diversion program under IC 11-12-3.7:

20 (1) The crime committed was a Class A **felony** or Class B felony
21 and the person has a prior unrelated felony conviction.

22 (2) The crime committed was a Class C felony and less than seven
23 (7) years have elapsed between the date the person was
24 discharged from probation, imprisonment, or parole, whichever
25 is later, for a prior unrelated felony conviction and the date the
26 person committed the Class C felony for which the person is
27 being sentenced.

28 (3) The crime committed was a Class D felony and less than three
29 (3) years have elapsed between the date the person was
30 discharged from probation, imprisonment, or parole, whichever
31 is later, for a prior unrelated felony conviction and the date the
32 person committed the Class D felony for which the person is
33 being sentenced. However, the court may suspend the minimum
34 sentence for the crime only if the court orders home detention
35 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
36 sentence specified for the crime under this chapter.

37 (4) The felony committed was:

38 (A) murder (IC 35-42-1-1);

39 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
40 causing death;

41 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

42 (D) kidnapping (IC 35-42-3-2);

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- 1 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 2 (F) rape (IC 35-42-4-1) as a Class A felony;
- 3 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 4 felony;
- 5 (H) except as provided in subsection (i), child molesting
- 6 (IC 35-42-4-3) as a Class A or Class B felony, unless:
- 7 (i) the felony committed was child molesting as a Class B
- 8 felony;
- 9 (ii) the victim was not less than twelve (12) years old at the
- 10 time the offense was committed;
- 11 (iii) the person is not more than four (4) years older than the
- 12 victim, or more than five (5) years older than the victim if
- 13 the relationship between the person and the victim was a
- 14 dating relationship or an ongoing personal relationship (not
- 15 including a family relationship);
- 16 (iv) the person did not have a position of authority or
- 17 substantial influence over the victim; and
- 18 (v) the person has not committed another sex offense (as
- 19 defined in IC 11-8-8-5.2) (including a delinquent act that
- 20 would be a sex offense if committed by an adult) against any
- 21 other person;
- 22 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 23 with a deadly weapon;
- 24 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 25 injury;
- 26 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 27 or with a deadly weapon;
- 28 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 29 weapon;
- 30 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 31 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 32 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the
- 33 court finds the person possessed a firearm (as defined in
- 34 IC 35-47-1-5) at the time of the offense, or the person
- 35 delivered or intended to deliver to a person under eighteen
- 36 (18) years of age at least three (3) years junior to the person
- 37 and was on a school bus or within one thousand (1,000) feet
- 38 of:
- 39 (i) school property;
- 40 (ii) a public park;
- 41 (iii) a family housing complex; or
- 42 (iv) a youth program center;

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(P) dealing in methamphetamine (IC 35-48-4-1.1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver the methamphetamine pure or adulterated to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(R) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(S) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death); or

(T) aggravated battery (IC 35-42-2-1.5); or

(U) disarming a law enforcement officer (IC 35-44-3-3.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of the sentence of a sex or violent offender (as defined in IC 11-8-8-5) that is suspendible under subsection (b), the court shall place the sex or violent offender on probation under IC 35-38-2 for not more than ten (10) years.

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1 (f) An additional term of imprisonment imposed under
2 IC 35-50-2-11 may not be suspended.

3 (g) A term of imprisonment imposed under IC 35-47-10-6 or
4 IC 35-47-10-7 may not be suspended if the commission of the offense
5 was knowing or intentional.

6 (h) A term of imprisonment imposed for an offense under
7 IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be
8 suspended.

9 (i) If a person is:
10 (1) convicted of child molesting (IC 35-42-4-3) as a Class A
11 felony against a victim less than twelve (12) years of age; and
12 (2) at least twenty-one (21) years of age;
13 the court may suspend only that part of the sentence that is in excess of
14 thirty (30) years.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1074, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, after "takes" insert "**or attempts to take**".

and when so amended that said bill do pass.

(Reference is to HB 1074 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 9, nays 0.

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